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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,510	02/16/2004	Mary Ann Hettich	038316/269234	1384

826 7590 03/14/2007
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EXAMINER

HOEY, ALISSA L

ART UNIT	PAPER NUMBER
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3765

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
2 MONTHS	03/14/2007	PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/780,510
Filing Date: February 16, 2004
Appellant(s): HETTICH, MARY ANN

MAILED
MAR 13 2007
GROUP 3700

Michele M. Glessner
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/13/06 appealing from the Office action
mailed 05/10/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,440,665	Russell	04-1969
3,975,929	Fregeolle	08-1976

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russell (US 3,440,665) in view of Fregeolle (US 3,975,929).

In regard to claim 1, Russell teaches a stocking garment (4) comprising a foot portion (11, 15), leg portion (12, 16) having a lower leg portion and an upper leg portion and a waist support (18) spaced above the leg portions (11, 16). A hip portion (17) extending between the leg portion and the waist support portion. The hip portion (17, 13) having a cutout portion (21, 22) on each side of the hip portion sized to accommodate the lower waist of the wearer so that the stocking may be worn on either leg (figure 1). The waist portion (18) constructed so as to accommodate a fastener (27, 28) surrounding the patient's waist and the stocking being capable of being worn on either leg of the patient (figures 1 and 2).

However, Russell fails to teach the stocking being a therapeutic gradient compression stocking.

Fregeolle teaches a therapeutic gradient compression stocking (column 1, lines 4-9).

In regard to claim 2, Russell teaches the waist portion (18) including strap engaging loop having a waist strap passing there through (figures 2 and 6).

In regard to claim 3, Russell teaches the waist strap fastening on either the left side of the right side of the strap (figures 2, identifiers 26, 27, 28, 29).

In regard to claim 4, it would have been obvious to have provided the foot portion having a closed toe configuration or a toe opening configuration, because as long as the stocking supports the user's leg and has a connecting waist portion allowing the stocking to be worn on either foot the toe configuration can be chosen by one having ordinary skill in the art based upon end use of the garment.

In regard to claim 5, Russell teaches the foot portion having a closed toe (11, 15).

In regard to claim 6, Russell fails to teach the pressure in the distal end of the stocking gradually decreases to the proximal end.

Fregeolle teaches the pressure in the distal end of the stocking gradually decreases to the proximal end of the stocking (column 1, lines 4-9).

In regard to claim 7, Russell teaches the hip portion (17) extending from about 30% to 50% of the circumference of the upper opening of the stocking exclusive of the cutouts (figures 1 and 2).

It would have been obvious to have provided the stocking of Russell having the waist connection with the therapeutic compression construction of the stocking of Fregeolle, since the stocking of Russell provided with the therapeutic compression construction would provide not only a stocking garment that secures at the waist to

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prevent the garment from falling down when worn but also provides therapeutic needs to the wearer preventing incidence of pulmonary embolism.

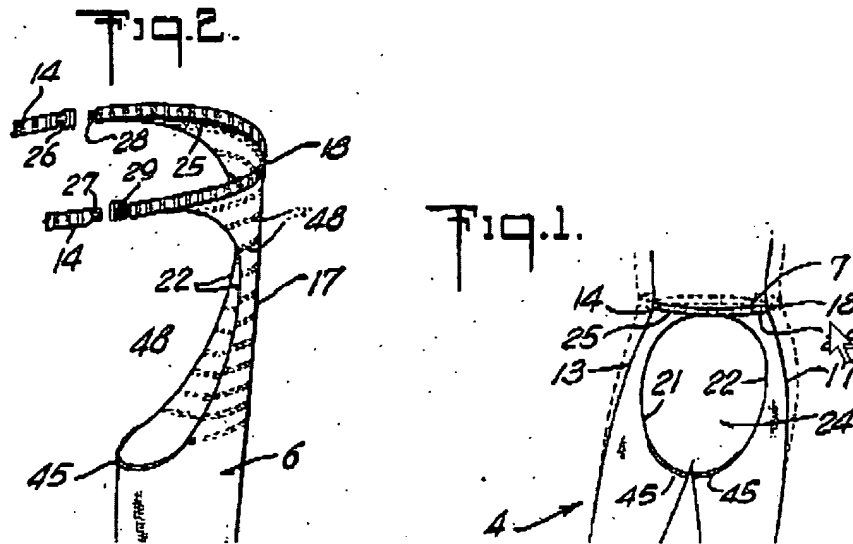
(10) Response to Argument

I)Applicant argues that Russell (US 3,440,665) fails to teach a single leg stocking with two slits.

The term “slits” has been used throughout Applicant’s arguments, this term however, has not been previously presented in either the specification, the claims or prior arguments. The Examiner is assuming the “slits” are referring to the cutout portions.

Examiner notes that Russell teaches a stocking garment which includes both the left and right leg portions. There is no limitation in the claims requiring a single stocking leg. However, even if the claim provided limitations for a single stocking leg, Russell would still teaches two slits in a single stocking leg, one cutout in the front of the leg portion and the other cutout in the back of the leg portion.

To clarify the limitation in claim 1 requiring “...a cutout portion on each side of said hip portion...” can be seen in Russell as both the cutout (figure 1 below, identifiers 21, 22) on each leg portion forming the stocking garment, or can be seen as the front cutout of a single leg and the back cutout of a single leg (see figure 2 below, identifiers 22).



II) Applicant argues that turning the compression stocking of Russell inside out is not desirable due to its heavy seams and construction.

Claim 1 of Applicant's invention requires that "...the cutout portion on each side of the hip portion sized to accommodate the lower waist of the wearer so that the stocking may be worn on either leg; and said waist portion constructed so as to accommodate a fastener surrounding the patient's waist, said stocking being capable of being worn on either leg of the patient."

The stocking garment of Russell is capable of being worn reversed so that the stockings are worn on either leg. There is nothing that prevents the garment from being reversed and worn in the reversed manner. The argument that the heavy seams would make it undesirable, does not limit the garment from being capable of doing so. Therefore, since the garment of Russell is capable of being worn in the reversed mode, each stocking can be worn on either leg as desired by the user.

III) Applicant argues that Fregeolle (US 3,975,929) teaches away from incorporating slits or cutouts into the stockings by disclosing that it eliminates the need for slitting (col. 1, lines 35-36 and column 5, lines 33-55).

Examiner notes once again that the term "slitting" or "slits" is not what is claimed or disclosed in applicant's invention, the term "cutout portions" is what is disclosed and claimed. Fregeolle uses the term "slitting" or "slits" with reference to the upper edge of the stocking being slit downwardly and a wedge shaped insert or soft elastic fabric is sewn into the slit to increase the cost of producing the stocking. Lines 20-40 below taken from Fregeolle column 1:

It has been found that elastic stockings reduce the incidence of pulmonary embolism in patients confined to bed and these stockings are routinely prescribed for many obstetric, medical, and surgical patients soon after they are admitted into the hospital. These stockings aid in speeding the blood flow and reduce the blood clotting conditions in the legs, where a great percentage of venous obstructions occur.

One type of anti-embolism stocking which has been widely used is disclosed in U.S. Pat. No. 3,728,875. This stocking is knit on a circular hosiery knitting machine and the upper portion is slit downwardly in a walewise direction and a wedge shaped insert of soft elastic fabric is sewn into the slit to increase the circumference of the upper end of the stocking. However, the slitting of the stocking and the sewing of the wedge shaped insert in the slit increases the cost of producing this type of stocking. The insert is not formed of the same type of compressive fabric as the remaining portion of the upper end of the stocking so that the portion of the leg covered by the insert does not receive the same compressive force as applied to the remaining portion of the leg of the wearer.

With the foregoing in mind, it is an object of the present invention to provide a thigh length anti-embolism stocking and method of knitting the same which requires no slitting of the stocking and does not require the sewing of a wedge shaped insert in the upper leg portion. The present stocking provides uniform compressive force around the area of the leg covered by the upper end of the stocking.

Fregeolle has been used in the rejection to teach that gradient compression stockings are well known and not new patentable material. Fregeolle teaches a "...a stocking which provides a gradually decreasing compressive force on the leg of the wearer from the ankle upwardly to the top of the stocking." In column 4, lines 43-68 through column 5, lines 1-25, Fregeolle discusses the forming of upper section 10 and lower section 11. The lower section 11 is made so that the stitch size is gradually reduced along with the stretchable texture yarn being knit on every needle, as compared, to the stretchable texture yarn of upper section 10 being knit on every even needle.

The upper section 10 and the lower section 11 of Fregeolle is used to teach the gradual compressive force on the leg of the wearer from the top to the ankle. The gradual compressive force provided by the stocking can reduce the incidence of pulmonary embolism, by aiding in speeding the blood flow and reducing blood clotting conditions in the legs, where a great percentage of venous obstructions occur. The "slitting" or "slits" are not part of sections 10 and 11.

IV) Applicant argues that there is not motivation to combine Russell with Fregeolle.

The motivation to combine the hosiery structure of Russell with the gradual compressive stocking of Fregeolle is that the structure of the hip-high hosiery of Russell provides for securement of the hose without being visible when wearing short skirts, while at the same time, providing for ease in slipping off or down. Further, the hosiery construction of Fregeolle provided in the structure of Russell would aid in the speed of

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the blood flow reducing the blood clotting conditions in the legs after surgery or during pregnancy.

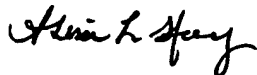
Examiner notes that the limitation in claim 1 that requires the stocking to be a therapeutic gradient compression stocking is found in the preamble and carries little weight. Russell teaches all the structure as required except for the claimed "therapeutic gradient compression stocking" of the preamble. The 103 rejection was used by the Examiner to show that therapeutic gradient compression stockings are widely known and that it wouldn't be out of ordinary skill in the art to knit any stocking garment using the gradient compression knitting process.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Alissa L. Hoey

Conferees:

Gary Welch



Eric Nicholson

